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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,565	02/09/2004	John T. Huston	Case 5887D	8509

41669 7590 05/04/2005

THE BABCOCK & WILCOX COMPANY
PATENT DEPARTMENT
20 SOUTH VAN BUREN AVENUE
BARBERTON, OH 44203

EXAMINER

JAGAN, MIRELLYS

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/774,565

Applicant(s)

HUSTON ET AL.

Examiner

Mirellys Jagan

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,142,417 to Cashdollar et al [hereinafter Cashdollar] in view of U.S. Patent 4,780,832 to Shah.

Cashdollar discloses a method of measuring temperature in a furnace (coal-fired burner), the method comprising:

positioning a pyrometer (1) having an optical head in the furnace, the pyrometer's optical head having a line of sight that intersects a passage of gas containing a plurality of gas components in the furnace;

receiving IR radiation from the gas as it passes the line of sight;

converting the radiation in the head to electrical signals (using detectors 7);

providing a photometer circuitry connected to the optical head for processing the electrical signals;

providing a scaling circuitry connected to the photometer circuitry for scaling the electrical signals, and scaling the electrical signals to maximize the signals;

providing an output circuitry (e.g., in computer) connected to the scaling circuitry for receiving the electrical signals and producing output signals; and

providing an output means (e.g., a graphical display) connected to the output circuitry for displaying the output signal as a temperature measurement;

wherein the electrical signals are obtained from IR radiation having a wavelength range of about 1.3 to 3.1 microns, the wavelength being about 1.38 (about 2.7) for sensing the temperature of H₂O in the gas, and the wavelength being in the range of about 1.8 and 3.1 microns for sensing the temperature of H₂O or CO₂ in the gas (see figures 1 and 4; column 3, lines 3-7 and 16-44; column 3, line 65-column 4, line 9; column 4, line 63-column 5, line 55; and column 6, lines 41-60).

Cashdollar does not disclose positioning the pyrometer in a port of the furnace.

Shah discloses a pyrometer for measuring the temperature of gas in a furnace (20). The pyrometer is positioned in a port of the furnace such that the pyrometer has a line of sight that intersects a passage of gas containing a plurality of gas components in the furnace for receiving direct IR radiation from the gas as it passes the line of sight to convert the radiation to electrical signals for obtaining a temperature measurement. Shah teaches that it is beneficial to place the pyrometer in a port of a furnace in order to receive direct IR radiation for obtaining real time temperature measurements (see column 4, line 638-47; column 4, lines 11-20).

Referring to claim 16, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method disclosed by Cashdollar by positioning the pyrometer in a port of the furnace, as taught by Shah, in order to receive direct IR radiation from the gas being measured.

Response to Arguments

3. Applicant's arguments with respect to claims 16-19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mirellys Jagan whose telephone number is 571-272-2247. The examiner can normally be reached on Monday-Friday from 10AM to 4PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571-272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJ

April 29, 2005


GAIL VERBITSKY
PRIMARY EXAMINER